IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1496 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

DEPUTY REGIONAL DIRECTOR - Appellant(s)
Versus
BABUBHAI JIVANLAL - Defendant(s)

==========

Appearance :
NOTICE SERVED for Appellant(s) : 1, MR HEMANT SHAH for Appellant(s) : 1,
MR SANDIP C SHAH for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. This appeal arises out of the judgement and order passed by Employees' State Insurance Court Ahmedabad, in Insurance Application E.S.I. No. 4 of 1986 dated 2nd March, 1990 declaring that the appellant corporation is liable to pay T.D.S. from 16.06.1985 to 19.07.1985 and also directed that the respondent should be sent to the Medical Board for assessing the extent of injuries.

2. The short facts of the case are that on 16.06.1985 the original applicant was going to the

mill on his bicycle where he was employed. At that time near Jamalpur, one autorikshaw dashed with the cycle. As a result of this the original applicant injured on his right hand and fingers. He was taken to hospital for treatment. Therefore the original applicant has filed an application before the E.S.I. Court that he is entitled to temporary disability benefits from 16.06.1985 to 19.07.1985 wherein the aforesaid order was passed.

3. learned advocate for the appellant has relied upon the decision of the apex court in the case of ***Regional Director, E.S.I. Corporation & Anr Vs. Francis De Costs & Anr. reported in 1997(2) GLR Vol XXXVII (2) page 1336*** whereby it is held in para 8 as under:

> “The other words of limitation in sub-sec (8) of Sec. 2 are “in the course of his employment”. The dictionary meaning of “in the course of” is “during (in the course of time, as time goes by), while doing” (The concise Oxford Dictionary, New, Seventh Edition). The dictionary meaning indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4-30 p.m., any accident before that time will not be “in the course of his employment. If 'employment' begins from the moment the employee sets out from his house for the

> factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

4. Learned advocate for the respondent has relied upon the decision of this Court in the case of ***Dudhiben Dharamshi and others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar reported in 1977 (II) L.L.J. Page 194,*** whereby it is held as under:

> "worker standing 10 feet away from the entry gate five minutes before start of shift and fatally knocked down therefore the fatal accident arose in the course of employment in the facts and circumstances of the case the employer is liable as both the conditions "in the course of employment" and "arising" out of employment.

The same principle has been laid down in the decision of the apex court in the case of ***Saurashtra Salt MFG. Co. Vs. Bai Valu Raja and others reported in 1958 II L.L.J. Page 249.***

5. Heard both the parties I have gone though the judgement of the trial court in view of the ratio laid down by the apex court more particularly ***3*** conditions which is referred in para 29 reproduced as

under:

> “Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. In order to succeed, it was to be proved by the employee that (1) there was an accident, (2) the accident had a casual connection with the employment and (3) the accident must have been suffered in the course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.”

As a result of hearing and perusal of the record, the facts of the issue raised in this case is squarely covered by the decision in the case of ***Regional Director, E.S.I. Corporation & Anr Vs. Francis De Costs & Anr. reported in 1997(2) GLR Vol XXXVII (2) page 1336*** and it is to be held that the accident has not happened during the course of employment. A part from that incident has not taken place in factory premises and therefore the same cannot be said to have happened during the course of employment.

7. In the premises aforesaid the appeal is allowed to the aforesaid extent. The order of the trial court is modified accordingly. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*